

**THIS MDR TRACKING NO. WAS REMANDED.  
THE AMENDED MDR TRACKING NO. IS: M5-04-1282-02**

MDR Tracking Number: M5-04-1282-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution –General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 1-9-04.

The IRO reviewed office visits, therapeutic exercises, work hardening program (additional hours) and physical performance test rendered from 6-19-03 through 9-12-03 that were denied based upon "V".

The IRO concluded that work hardening program (additional hours) were not medically necessary. The IRO concluded that office visits, therapeutic exercises and physical performance test were medically necessary.

The Medical Review Division has reviewed the IRO decision. The IRO has not clearly determined the prevailing party over the medical necessity issues. Therefore, in accordance with §133.308(q)(2)(C), the commission shall determine the allowable fees for the health care in dispute, and the party who prevailed as to the majority of the fees for the disputed health care is the prevailing party.

DOS	CPT CODE	Billed	MAR\$ (Maximum Allowable Reimbursement)	Medically Necessary	Not Medically Necessary
6-19-03	99213	\$48.00	\$48.00	\$48.00	
6-27-03 6-30-03 7-7-03 7-16-03	97110 (3)	\$105.00	\$35.00 / 15 min	\$105.00 X 4 dates = \$420.00	
7-28-03 9-11-03	97750FCAP (4)	\$400.00 \$296.00	\$100.00 / hr \$293.50	\$400.00 \$293.50	
9-11-03	97546WHCA	\$320.00	\$320.00		\$320.00
7-2-03	97110 (2)	\$70.00	\$35.00 / 15 min	\$70.00	
TOTAL				\$1231.50	\$320.00

Consequently, the commission has determined that **the requestor prevailed** on the majority of the medical fees (\$1231.50). Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On April 15, 2004, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

The following table identifies the disputed services and Medical Review Division's rationale:

No EOB: Neither party in the dispute submitted EOBs for some of the disputed services identified above. Since the insurance carrier did not raise the issue in their response that they had not had the opportunity to audit these bills and did not submit copies of the EOBs, the Medical Review Division will review these services per *Medical Fee Guideline*.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
7-9-03 7-11-03	97110 (4)	\$140.00	\$00.00	No EOB	\$35.00 / 15 min X 4 = \$140.00	CPT Code Descriptor	MAR reimbursement of \$140.00 x 2 dates = \$280.00 is recommended.
9-2-03 9-3-03 9-4-03 9-5-03 9-8-03 9-10-03 9-11-03	97545HWCA	\$128.00	\$00.00	No EOB	\$128.00		MAR reimbursement of \$128.00 x 7 dates = \$896.00 is recommended.
9-2-03 9-3-03 9-4-03 9-5-03 9-8-03	97546WHCA	\$320.00	\$0.00	No EOB	\$64.00 / hr X 5 = \$320.00		MAR reimbursement of \$320.00 x 5 dates = \$1600.00 is recommended.
9-10-03	97546WHCA	\$256.00	\$0.00	No EOB	\$64.00 / hr X 4 = \$256.00		MAR reimbursement of \$256.00 is recommended.
TOTAL							The requestor is entitled to reimbursement of <b>\$3032.00.</b>

This Decision is hereby issued this 10th day of September 2004

Elizabeth Pickle  
Medical Dispute Resolution Officer  
Medical Review Division

### ORDER.

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule

133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Decision is applicable for dates of service 6-19-03 through 9-12-03 in this dispute.

This Order is hereby issued this 10<sup>th</sup> day of September 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

June 9, 2004

Texas Workers' Compensation Commission  
Medical Dispute Resolution  
Fax: (512) 804-4868

Re: Medical Dispute Resolution  
MDR #: M5-04-1282-01  
IRO Certificate No.: 5055

Dear Ms. \_\_\_\_:

\_\_\_\_ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, \_\_\_\_ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of \_\_\_\_ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is certified in Chiropractic Medicine and is currently on the TWCC Approved Doctor List.

### **REVIEWER'S REPORT**

#### **Information Provided for Review:**

TWCC-60, Table of Disputed Services, EOB's  
Information provided by Requestor: letter of medical necessity, office notes, progress notes, physical therapy notes, FCE, radiology report and designated doctor exam.

**Clinical History:**

The patient was initially injured on \_\_\_\_\_. He states that he lost consciousness and injured his neck. He reports that he went to the hospital on the day of the accident to the Emergency Room and was prescribed medication. He continued to have symptoms, and on 04/10/03 sought additional care. Initial symptoms were that of neck pain rated a six on a scale from zero to ten, and right arm pain rated a nine on a scale from zero to ten. He also describes fatigue, nervousness, difficulty sleeping, and weakness of the right arm since the accident. His job description was that he was employed as a driver, and his daily job performance required him to sit for four hours and stand for six hours. There is no mention in the initial report as to his weight lifting restrictions or requirements.

Initial evaluation was performed, and this patient began an aggressive an intensive chiropractic manipulative therapy and passive therapy program, which progressed into an active therapy program. Over the course of treatment, diagnostic testing was performed, which reveals positive findings. In addition, the patient is 5 feet 7 inches in height and weighs 312 pounds. A functional capacity evaluation was performed on July 28, 2003, which revealed the patient's present physical demand level was medium/33 pounds.

**Disputed Services:**

Office visits, therapeutic exercises, work hardening-additional hours and physical performance testing during the period of 06/19/03 through 09/12/03.

**Decision:**

The reviewer partially agrees with the determination of the insurance carrier. The office visits, therapeutic exercises and physical performance testing during the period of 06/19/03 through 09/12/03 were medically necessary. However, the work hardening-additional hours during this period in dispute was not medically necessary in this case.

**Rationale:**

There is nothing in the remainder of the functional capacity evaluation report that would warrant the patient to undergo an intensive multidisciplinary program of work hardening. In fact, the patient's own neck disability index was essentially normal with only minimal significant responses. Given the intensive amount of passive as well as active therapy the patient had received, it was not clinically justified for this patient to enroll in a work-hardening program. After the findings of this functional capacity evaluation, this patient could have been released and returned to work restrictive duty utilizing the findings in the functional capacity evaluation test 4-6 hours per day in conjunction with a 2-4 hour per day work conditioning program in order to assist the patient with his de-conditioned status as well as transition back into a work force as he had been completely taken off of work for several months. This could have been accomplished within 2-4 weeks.

After the day of the functional capacity evaluation, the patient could have been released to full active duty and progressed into a home therapy program as needed. This would have, in fact, approximately coincided with the patient receiving a designated doctor evaluation on August 20, 2003 in which he was placed at maximum medical improvement and given a 7% whole person permanent impairment rating.

In conclusion, office visits, therapeutic exercises, and physical performance testing during the period of 6/19/03 until 9/12/03 were, in fact, reasonable, usual, customary, and medically necessary for the treatment of this patient's on the job injury. However, work hardening-additional hours during the period of 6/19/03 through 9/12/03 were not medically necessary for the treatment of this patient's on the job injury.